Supreme Court, U.S.
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No. 86-532

In the Supreme Court of the United States

October Term, 1986

CITY OF LOS ANGELES, et al.,

Petitioners;

v.

LEROY BUTTLER and DONALD BUTTLER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTIONS PRESENTED

1. Where a state mandates that all civil cases commence trial within five years of the filing of the complaint but tolls all time where it would be "impossible, impractical, or futile" to bring the case to trial, is it a question of state law as to whether such tolling occurred as to all plaintiffs in a case where one of the plaintiffs obtains a stay pursuant to section 521 of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. Appen. section 521)?

2. Does section 521 of the Soldiers' and Sailors' Civil Relief Act allow a court to place the burden of proving that the serviceman's rights will not be materially affected by the denial of a stay of proceedings on the party opposing the stay where the opposing party admits that it would invoke the doctrine of collateral estoppel to preclude the serviceman's cause of action?

3. If a serviceman has obtained a stay of proceedings pursuant to section 521 of the Soldiers' and Sailors' Civil Relief Act, is the realistic possibility that two co-plaintiffs might not prevail in their suit and thereby collaterally estop the serviceman from relitigating issues determined in the first suit a proper basis under the Relief Act to permit the serviceman to obtain a stay of his co-plaintiffs' trial?

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LEROY BUTTLER and DONALD BUTTLER,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Leroy and Donald Buttler hereby oppose the petition for writ of certiorari to the Second Appellate District of the California Court of Appeal. For the reasons that follow, respondents respectfully request that the petition be denied.

JURISDICTION

Respondents dispute petitioners' assertion that this court has jurisdiction over this matter pursuant to 28 U.S.C. section 1257(3). That statute allows review of

a state court decision by writ of certiorari where the validity of a statute of the United States is drawn into question. As more fully set out in the argument sections of this brief, respondents submit that this case turns entirely upon a state statute, California *Code of Civil Procedure* section 583(b), and not upon the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appen. section 521.

STATEMENT OF THE CASE

1. The Facts Leading Up To The First Appeal.

This is the second time in which petitioners have requested this court to review this case. In the first appeal, *Buttler v. City of Los Angeles*, 153 Cal.App.3d 520, 200 Cal.Rptr. 372 (1984), *cert. denied*, 469 U.S, 883 (1984), the California Court of Appeal accurately summarized most of the pertinent facts, and parts of that summary are therefore quoted below:

> "On November 19, 1976, plaintiff Victor Buttler, his brother Donald, and their father Leroy filed suit against the defendants City of Los Angeles and eight of its police officers. Their complaint alleged that plaintiffs had been the victims of false arrest, false imprisonment, assault and battery by the defendant officers.
>
> "Plaintiffs began to prosecute their action in a diligent manner. One week after defendants answered the complaint plaintiffs filed their at-issue memorandum. Plaintiffs responded to interrogatories propounded by defendants in May 1977 and in August 1977 propounded their own interrogatories to defendants.
>
> "The superior court issued its first notice of eligibility to file a certificate of readiness in

March 1979. By that time plaintiff Victor Buttler was on active duty in the United States Navy stationed on board a ship in Rota, Spain.

"Victor Buttler commenced active military service on November 6, 1978. He was stationed in Spain during the period March 1979 through June 1981. He did not appear in response to defendants' notices of deposition in December 1978 and February 1980.[1]

"In January 1982 the matter not having been brought to trial within five years, defendants moved to dismiss pursuant to *Code of Civil Procedure* section 583, subdivision (b). Plaintiffs resisted this motion on the ground that plaintiff Victor Buttler had been on active duty in the United States Navy between November 1978 and June 1981 and that the five-year period was suspended as to all three plaintiffs during Victor Buttler's military service by reason of the Soldiers' and Sailors' Civil Relief Act (hereafter referred to as the Act.)

"At the hearing on defendant's motion to dismiss, the trial court made a tentative ruling denying the motion provided that plaintiffs move to specially set the matter for trial within 60 days. This ruling was made conditional on whether the Act applied to plaintiffs as well as defendants. The court requested supplemental points and authorities on this issue. After receiving the parties' supplemental briefs, the trial court granted defendants' motion to

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[1]Plaintiffs' former counsel did, however, inform defendants at this time that Victor Buttler was serving in the armed forces.

> dismiss. Plaintiffs' motions for reconsideration and for relief on the ground of their mistake of law were denied. Plaintiffs also requested a Statement of Position from the court regarding, inter alia, the application of the Act to plaintiff Victor Buttler. The court did not respond to this request." 153 Cal.App.3d at 522-523, 200 Cal.Rptr. at 373-374.

2. The Decision In The First Appeal.

The California Court of Appeal reversed the trial court's first dismissal and remanded the case for further proceedings. *Buttler v. City of Los Angeles*, 153 Cal.App.3d 520, 200 Cal.Rptr. 372 (1984). The court held that section 525 of the Soldiers' and Sailors' Relief Act, 50 U.S.C. Appen. section 525, tolled California's five year statute, *Code of Civil Procedure* section 583(b), while plaintiff Victor Buttler was in military service. 153 Cal.App.3d at 525, 200 Cal.Rptr. at 375.

The issue that necessitated the remand as to Leroy and Donald Buttler was the effect of section 521 of the Soldiers' and Sailors' Relief Act, 50 U.S.C. Appen. section 521. Under that statute, a person in military service may apply for a stay of any proceeding. As noted by the Court of Appeal, that statute mandates "a postponement of trial unless the court is satisfied that by going forward the ability of the person in military service to prosecute or defend would not be materially affected." 153 Cal.App.3d at 526, 200 Cal.Rptr. at 376. The court then stated:

> "Here no application for a stay was actually made but that does not preclude the court from considering, for purposes of section 583, subdivision (b), whether a stay would have been mandatory if it had been applied for. (*Pacific*

> *Greyhound Lines v. Superior Court, supra*, 28 Cal.2d at p. 67; *Rauer's Law, supra*, 76 Cal.App.2d at p. 858.) If Victor Buttler could have invoked section 521 of the Act to block the other plaintiffs from going to trial then, as a matter of law, it would have been objectively impossible for them to prosecute their actions while he was in military service. Thus it may have been 'futile' for the other plaintiffs to have sought a trial while Victor was in the service since he would have been entitled to stay that trial." 153 Cal.App.3d at 526, 200 Cal.Rptr. at 376.

The Court of Appeal then stated that the trial court apparently did not consider whether Leroy and Donald Buttler's prosecution of their action could be prejudicial to Victor Buttler's ability to prosecute his claims:

> "[U]nder title 50 United States Code, Appendix Section 521 Victor *may* have been entitled to stay the other actions as well as his own because of prejudice *to him* from a separate trial of those lawsuits. We are reversing the order of dismissal as to Leroy and Donald Buttler so that the trial court can reconsider the matter in this light." 153 Cal.App.3d at 527, 200 Cal.Rptr. at 377 (emphasis in original).

3. Further Proceedings In The Trial Court.

On June 26, 1984, after denial of certiorari by this court (469 U.S. 883 (1984)), plaintiffs Leroy and Donald Buttler filed their motion for further proceedings consistent with the opinion of the Court of Appeal. In their moving papers, plaintiffs focused on the harm that would inure to Victor Buttler if they had been forced to go to trial without him. First, if a jury were to find

against Leroy and Donald, such a finding could be used to collaterally estop Victor from litigating his claims. Further, all plaintiffs were also percipient witnesses, and the jury might therefore not receive a full account of the events surrounding the police officers' action. Moreover, if Leroy and Donald were to try the case without Victor, defendants could point the finger of accusation as to alleged crimes or suspicious circumstances at the missing plaintiff or plaintiffs. Finally, even assuming a verdict in favor of Leroy and Donald, the jury might not have enough first hand evidence to find for Victor. This would then require Victor to proceed to a second trial on essentially the same issues, resulting in an unnecessary and wasteful multiplicity of actions.

On August 17, 1984, defendants then filed their opposition papers. Conspicuous by its absence is *any* showing of prejudice that would result to defendants if Leroy and Donald Buttler remained in the suit. Such a showing would be impossible, of course; the City and its officers would be required to defend the suit brought by Victor Buttler regardless of the presence or absence of the other plaintiffs.

On August 22, 1984, the motion came on for hearing in the trial court. The court dismissed the case pursuant to *Code of Civil Procedure* section 583(b) as to Leroy and Donald Buttler, stating without analysis or elaboration in the minute order that "Victor's ability to prosecute his action would not have been materially affected by Donald and Leroy proceeding to trial in their cases."

4. The Decision In The Second Appeal.

Plaintiffs Leroy and Donald Buttler appealed their dismissal to the California Court of Appeal, which reversed in an unpublished opinion (appendix "A" to

petition for writ of certiorari). The court held that, under the circumstances of this case, defendants had the burden of showing that the denial of a stay would not have materially affected serviceman Victor Buttler's rights. The court held that defendants had failed to sustain this burden, especially where they had conceded that they would have attempted to invoke the doctrine of collateral estoppel against Victor Buttler if they had prevailed in an earlier trial involving the other co-plaintiffs. The court noted that defendants' collateral estoppel argument would not have been frivolous, and that courts must protect servicemen if they might be adversely affected absent a stay. Since Victor Buttler could have stayed the entire action in order that all three plaintiffs could proceed to trial at the same time against defendants, the Court of Appeal held that it was "impossible, impractical or futile" for Leroy and Donald Buttler to have complied with California *Code of Civil Procedure* section 583(b).

SUMMARY OF ARGUMENT

Respondents respectfully submit that review of this case by this court would be both improper and unnecessary. Contrary to petitioners' assertions, this case involves primarily questions of state rather than federal law. Under California law, all plaintiffs in civil cases must bring their actions to trial within five years of the filing of the complaint; there are, however, certain judicially-created exceptions to this "five year statute." One of the exceptions provides that the statute is tolled where, for some reason, trial would be "impossible, impractical or futile." In *Buttler v. City of Los Angeles*, 153 Cal.App.3d 520, 200 Cal.Rptr. 372 (1984), *cert. denied*, 469 U.S. 883 (1984), the California Court of Appeal determined that plaintiff Victor Buttler, a serviceman, was entitled to a stay of his action against

petitioners under the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appen. section 521, which thereby tolled the five year statute as to him. The case was remanded to the trial court for a determination as to whether an earlier trial involving the other two co-plaintiffs could affect Victor Buttler's rights such as to entitle him to a stay of the entire action. In this second appeal, the California Court of Appeal held that Victor Buttler's rights might be affected, that a stay of the entire action would have been proper, and that therefore it was "impossible, impractical or futile" for respondents Leroy and Donald Buttler to comply with California's five year statute. For these reasons, and others to be analyzed in detail below, it is submitted that this case involves the interpretation of a state statute, California's "five year statute," and that review by this court is therefore improper.

Even if this case somehow concerns the applicability of a federal statute, respondents contend that review by this court is unnecessary because no important question has been presented. Petitioners foresee dire consequences as a result of the California Court of Appeal's decision, but it is difficult to comprehend those fears when one realizes that the state court opinion was not even published. Even assuming that one accepts petitioners' strained reading of the Court of Appeal's decision, that decision has no ramifications beyond the parties to this case. Intervention by this court is therefore wholly unnecessary.

ARGUMENT

I.

REVIEW BY THIS COURT IS IMPROPER BECAUSE THIS CASE TURNS ON THE INTERPRETATION OF A STATE STATUTE.

The "presence" of a federal statute in this case is both illusory and deceiving. Petitioners claim that the California Court of Appeal has "incorrectly decided an important question of federal law" by making a sweeping and erroneous interpretation of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appen. section 521. What the Court of Appeal in fact held, however, is that two non-military plaintiffs were excused from complying with California's statutory provision requiring all civil cases to commence trial within five years of the filing of the complaint because it was "impossible, impractical or futile" for them to comply with that statute. It was "impossible" for these plaintiffs to bring their case to trial within five years because of a prior judicial determination that co-plaintiff Victor Butler was entitled to a stay pursuant to the Soldiers' and Sailors' Civil Relief Act. *This determination is final because this court has already denied certiorari. Buttler v. City of Los Angeles*, 153 Cal.App.3d 520, 200 Cal.Rptr. 372, *cert. denied*, 469 U.S. 883 (1984). Petitioners' attempt to close the barn door three years after the horse has escaped must fail.

Because the first appeal in this case has long since become final, it is necessary to determine what issues were determined in that appeal and what issues were adjudicated in this, the second appeal. In its 1984 decision, the Court of Appeal made three determinations: (1) Section 525 of the Act, which tolls any period limiting "the bringing of any action" by a person in

military service for the time in which he is in the military, applied to California's "five year statute," *Code of Civil Procedure* section 583(b), and that the dismissal of serviceman Victor Buttler's action for failure to comply with the five year statute was therefore erroneous (153 Cal.App.3d at 523-526, 200 Cal.Rptr. at 374-376); (2) Serviceman Victor Buttler was also entitled to the protection of section 521 of the Act, which provides for a mandatory stay unless the court is satisfied that plaintiff's ability to prosecute his case is not materially affected by reason of his military service (153 Cal.App.3d at 526, 200 Cal.Rptr. at 376); and (3) Serviceman Victor Buttler's stay under section 521 could apply to the entire action if his rights would be prejudiced by the continued prosecution of the case by co-plaintiffs Leroy and Donald Buttler—if so, it would be "impossible, impractical, or futile" under California *Code of Civil Procedure* section 583(b) to bring the case to trial within five years. (153 Cal.App.3d at 526-527, 200 Cal.Rptr. at 376-377). The Court of Appeal therefore remanded the case for a determination as to whether Victor Buttler's rights would have been prejudiced if his co-plaintiffs had brought their case to trial in a timely fashion in compliance with California's five year statute. 153 Cal.App.3d at 527, 200 Cal.Rptr at 376-377. These determinations, especially that where serviceman Victor Buttler was entitled to a stay pursuant to section 521 of the Act, became final when this court denied certiorari. 469 U.S. 883 (1984).

The issues decided in the present appeal, however, are considerably narrower and of less import, as the Court of Appeal impliedly recognized when it elected not to publish the opinion of the second appeal in the

official reports.[2] The Court of Appeal merely concluded that it would have been "impossible" for Leroy and Donald Buttler to have complied with California's five year statute. This was so because the City of Los Angeles conceded that it would use the doctrine of collateral estoppel against serviceman Victor Buttler if it were successful in defending the claims of the other two non-military plaintiffs. Since the language of section 521 of the Act clearly states that its stay will issue unless "the ability of the plaintiff to prosecute the action . . . is not materially affected by reason of his military service," the Court of Appeal concluded that the City's concession invoked section 521 and made it "impossible" for Leroy and Donald Buttler to have complied with California's five year statute. The "impossibility" doctrine was developed by California courts as an implied exception to the state's five year statute. See, e.g., *Brunzell Construction Co. v. Wagner*, 2 Cal.3d 545, 86 Cal.Rptr. 297, 468 P.2d 553 (1970).

It is a standard tenet of federalism that this court is bound to accept the interpretation of state law by the highest court of that state. See, e.g., *Hortonville Joint School Dist. No. 1 v. Hortonville Ed. Ass'n*, 426 U.S. 482, 488, 96 S.Ct. 2308, 2312 (1976); *Speiser v. Randall*, 357 U.S. 513, 522 n. 7, 78 S.Ct. 1332, 1340

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[2]Rule 976(b) of the California *Rules of Court* prohibits publication of a Court of Appeal opinion unless the opinion: "(1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule; (2) resolves or creates an apparent conflict in the law; (3) involves a legal issue of continuing public interest; or (4) makes a significant contribution to legal literature . . . ." The Court of Appeal obviously felt that the opinion in the second appeal did not meet any of those requirements. Indeed, if this case "created" any law, it was done in the first opinion.

n. 7 (1958).[3] The California Court of Appeal has determined, on the facts of this case, that it was "impossible, impractical or futile" for respondents to comply with a state statute, *California Code of Civil Procedure* section 583(b). This court cannot interfere with a state court interpretation of state law. The petition for writ of certiorari should therefore be denied on that basis.

II.

THE UNPUBLISHED OPINION OF THE CALIFORNIA COURT OF APPEAL FAILS TO RAISE ANY ISSUE WARRANTING REVIEW BY THIS COURT.

Petitioners have provided this court with a front row seat to the parade of horribles they envision will occur if the decision of the California Court of Appeal stands. One is left with the impression that, absent intervention by this court, a landmark case called *Buttler v. City of Los Angeles* will be cited and unjustly applied to defendants across the nation. As mentioned above, however, it is impossible for such a "horrible" result to occur, since the decision of the Court of Appeal was not certified for publication and therefore cannot be cited as authority in other cases. As discussed below, however, the Court of Appeal's opinion does not create a conflict with other state and federal decisions even if the opinion was officially published. Petitioners' parade has been rained on, and review by this court is unnecessary.

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[3]Since the California Supreme Court denied review of this case, the Court of Appeal's opinion has become "the highest court" of California for purposes of this case. Petitioners have conceded this point (see petition for writ of certiorari at p. 35).

A. This Case Does Not Present a Conflict Between California Decisional Law and Federal Circuit Cases Regarding How a Serviceman Should Protect His Rights in a Civil Action During Military Service.

Petitioners claim that the decision in this case and a decision relied on by the Court of Appeal, *Pacific Greyhound Lines v. Superior Court*, 28 Cal.2d 61, 168 P.2d 665 (1946), conflict with three federal circuit decisions on the issue of whether a serviceman is required to actively protect his rights in a civil suit while he is in military service. A review of the three federal decisions reveals that no such conflict exists, and that review by this court is therefore unnecessary.

In *Gross v. Williams*, 149 F.2d 84 (8th Cir. 1945), defendant Gross, a serviceman, was sued for injuries allegedly sustained by plaintiffs in an automobile accident. Shortly after the action was filed, defendant requested a stay pursuant to the Soldiers' and Sailors' Civil Relief Act. The district court found that defendant's testimony was adequately preserved by his deposition, and denied the stay on the basis that the serviceman's ability to conduct his defense was "not materially affected by reason of his military service." The Court of Appeals, *finding no abuse of the district court's discretion*, affirmed. 149 F.2d at 86. *Gross* does not stand for the proposition that "mere presence" in the armed services can never be a sufficient ground upon which to invoke a stay; rather, it stands only for the proposition that the denial of a stay was not an abuse of discretion under the facts of the case.

Similar to *Gross* is the somewhat more recent case of *Tabor v. Miller*, 389 F.2d 645 (3rd Cir. 1968). Like *Gross, Tabor* involved an automobile accident in which

one of the defendants, Stearns, was in the armed services. Shortly before trial, Stearns requested a stay, stating only that it would be "highly desirable" for him to complete his pilot training without interruption for the next eight months. The district court ordered that Stearns' deposition be taken two weeks before trial, during his Christmas leave, and denied the stay. On appeal the Third Circuit affirmed, noting that Stearns had never contended that it would be "impossible" for him to attend trial, and that the district court *did not abuse its discretion* in concluding that Stearn's deposition testimony on the eve of trial adequately preserved his rights. Like *Gross, Tabor* does not stand for the proposition for which petitioners cite it, and does not conflict with the decision in the instant case or with *Pacific Greyhound. Tabor* merely states that a court could properly conclude that a serviceman's rights would not be materially affected by his absence at trial where he was deposed shortly before that trial.

The final member of petitioners' alleged "conflicting" trilogy is *Crowder v. Capital Greyhound Lines*, 169 F.2d 674 (D.C. Cir. 1948). Plaintiff filed a personal injury action against defendant in 1941 and later joined the military. Plaintiff's counsel requested and was granted a continuance in 1944 because plaintiff's whereabouts was unknown. The case languished for two more years, at which point defendant moved to dismiss for lack of prosecution. Plaintiff's counsel made no effort to ascertain where plaintiff was or even whether he was still in the military. The trial court dismissed the action, and the Court of Appeals affirmed, against stating that "the trial court was justified *in its discretion* in ordering the dismissal of the action." 169 F.2d at 675 (emphasis added).

Even a cursory analysis of the three above cited cases makes it clear that petitioner's alleged "conflict" has no substance. The courts in *Gross, Tabor*, and *Crowder* merely held that the trial courts in those cases did not abuse their discretion in finding that the servicemen's rights were adequately protected. Such holdings' surely do not conflict with *Pacific Greyhound*, where the California Supreme Court held that the trial court did not abuse its discretion in *granting* a stay. Neither do these decisions conflict with the Court of Appeal in the present case, where undisputed evidence demonstrated that petitioners would attempt to invoke collateral estoppel to prejudice the rights of a serviceman. Petitioners' strained attempt to create a "conflict" and thereby gain this court's attention should be rejected.

B. Consistent With Statutory and Case Law, The Court of Appeal Properly Assigned The Burden of Proof to the Defendants Under the Circumstances of This Case.

Petitioners claim that it was error for the Court of Appeal to require them to come forward with evidence that serviceman Victor Buttlers' rights would not have been materially affected absent a stay of the entire action. They contend that this determination conflicts with this court's decision in *Boone v. Lightner*, 319 U.S. 561, 63 S.Ct. 1223 (1943). An examination of *Boone* and of section 521 of the Act itself reveals no such conflict, and that placing the burden on defendants under the circumstances of this case was entirely proper.

Section 521 of the Act provides that a court shall stay an action in which a plaintiff is in the military "unless, in the opinion of the court, the ability of plaintiff to prosecute the action . . . is not materially affected by reason of his military service." In *Boone v. Lightner,*

supra, 319 U.S. 561, 63 S.Ct. 1223 (1943), this court observed that the Act makes no express provision as to which party has the burden of coming forward with the evidence, and then stated:

> "We, too, refrain from declaring any rigid doctrine of burden of proof in this matter, believing that courts called upon to use discretion will usually have enough sound sense to know from what direction their information should be expected to come. *One case may turn on an issue of fact as to which the party is an important witness* . . . . The next may involve an accident caused by one of his family using his car with his permission, which he did not witness, and as to which he is fully covered by insurance . . . . To say that the mere fact of a party's military service has the same significance on burden of persuasion in the two contexts would be to put into the Act through a burden of proof theory the rigidity and lack of discrimination application which Congress sought to remove by making stays discretionary. We think the ultimate discretion includes a discretion as to whom the court may ask to come forward with facts needful to a fair judgment." 319 U.S. at 569-570, 63 S.Ct. at 1228-1229 (emphasis added).

This court has thus made it clear that it depends on the facts and circumstances of the given case as to whom the burden of going forward with the evidence rests upon. The California Court of Appeal in this case determined that the burden rested upon defendants. This was so because defendants conceded that they would have attempted to invoke collateral estoppel to bar some or all of serviceman Victor Buttler's claims if they were

successful in defending a separate earlier trial against co-plaintiffs Leroy and Donald Buttler. Under these circumstances, it certainly seems reasonable to place the burden of proof upon the City to show that the use of collateral estoppel would not materially affect Victor Buttler's ability to prosecute his lawsuit. As envisioned by this court in *Boone*, it would certainly seem to make more sense to have this information come from the City.

Petitioners' assertion that the Court of Appeal ignored *Boone* is groundless. Both *Boone* and the Act itself allow a court to place the burden of proof upon the party resisting the stay if such an assignment is reasonable under the facts of the case. That assignment was reasonable here, and this case therefore does not conflict with *Boone* or section 521 of the Act itself.

III.

CONCLUSION.

The petition for writ of certiorari fails to show why review by this court is either proper or necessary. This case turns upon the interpretation of a state statute, and therefore is not subject to review by this court. Further, even if application of a federal statute is involved, the unpublished decision of the California Court of Appeal does not in any way conflict with existing case law. For these reasons, therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondents
LEROY BUTTLER and DONALD BUTTLER

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on January 23, 1987, I served the within *Brief in Opposition to Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Original and forty copies)

Clerk of the Los Angeles
Superior Court for the
Hon. Norman R. Dowds
111 North Hill Street
Los Angeles, California 90012

Clerk, California Court of
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I declare under penalty of perjury that the foregoing is true and correct. Executed on January 23, 1987, at Los Angeles, California.

Joy Rivelli Miller
(Original signed)